Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	DA 04-4070
	)	
National Exchange Carrier Association, Inc. Proposed 2005 Modification of Average Schedule Formulas	)	

PETITION FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA) respectfully requests reconsideration of the Bureau's December 30, 2004 *Order* in the above-captioned proceeding.[1] Reconsideration of the *December 2004 Order* is sought insofar as it approved a Cost Per Loop (CPL) formula for distributing High Cost Fund (HCF) Universal Service support to average schedule companies, in place of NECA's proposed[2] Expense Adjustment Per Loop (EAPL) formula.

I. BACKGROUND

Consistent with prior years' practice, NECA's *September 2004 Filing* proposed an EAPL formula for determining HCF support for average schedule companies. The EAPL formula is the most accurate formula available for simulating the HCF payments

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2005 Modification of Average Schedule Formulas, *Order*, DA 04-4070 (rel. Dec. 30, 2004) (*December 2004* Order).

[2] 2005 NECA Modification of Average Schedule Universal Service Formulas, National Exchange Carrier Association, Inc., Sept. 29, 2004 (*September 2004 Filing*).

that average schedule companies would receive if they were to perform cost studies. Consistent with prior years' decisions, the Bureau found that NECA's EAPL formula failed to simulate the cost per loop data of average schedule sample companies, and accordingly approved a CPL formula that NECA had included in its filing.[3]

NECA has sought review or reconsideration of each of the Bureau's prior decisions, explaining consistently that the EAPL formula cannot be evaluated on how well it simulates cost per loop data because the formula is designed, as its name implies, to simulate expense adjustments (payments) per loop, a related – but different – quantity. NECA has further explained that a formula that was designed to simulate cost per loop data (*i.e.*, a CPL formula) would cause average schedule companies to suffer payment shortfalls.[4]

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[3] *See* National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, *Order*, 14 FCC Rcd 4049 (1999), (*aff'd*, 15 FCC Rcd 1819 (2000)); National Exchange Carrier Association Inc. Proposed 2000 Modifications of Average Schedule Universal Service Formulas, *Order*, 15 FCC Rcd 5065 (2000); National Exchange Carrier Association, Inc. Proposed 2001 Modifications of Average Schedule Universal Schedule Service Formulas, *Order*, 16 FCC Rcd 25 (2001); and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas, *Order*, 17 FCC Rcd 14236 (2002) (*July 2002 Order*); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2002 [sic] Modification of Average Schedule Formulas, *Order*, 17 FCC Rcd 26204 (2002) (*December 2002 Order*); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2004 Modification of Average Schedule Formulas, *Order*, 18 FCC Rcd 26619 (2003) (*December 2003 Order*).

[4] *See* National Exchange Carrier Association, Inc., Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, ASD 98-96, *Application for Review* (April 16, 1999), *review den.*, National Exchange Carrier Association, Inc. v. FCC, 253 F.3d 1 (D.C. Cir 2001).

This occurs because of a phenomenon called "threshold bias." Threshold bias causes the CPL formula systematically to produce payments that are lower than those that would be received by average schedule companies if they were to conduct cost studies.[5] In NECA's view, a formula that, by its nature, produces inadequate payments to average schedule companies cannot satisfy the "disbursement simulation" test specified in section 69.606(a) of the Commission's rules.[6]

In 2002, the Bureau launched a detailed investigation of NECA's proposed 2002 HCF formula, with a focus on the question of threshold bias.[7] The Bureau's investigation took more than seven months, during which time NECA representatives met frequently with Bureau staff and responded thoroughly to numerous requests for data, exhibits, charts and graphs.[8] NECA also provided several narrative explanations related to the "threshold bias" problem.

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[5] *See generally*, NECA's *September 2004 Filing* at I-7- I-9.

[6] 47 C.F.R. § 69.606(a) ("Payments shall be made in accordance with a formula approved or modified by the Commission. Such formula shall be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies").

[7] National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas, *Order*, 17 FCC Rcd 15 (2002) at ¶ 5. (*December 2001 Order)*.

[8] Between the *December 2001 Order* release, announcing the Bureau's intention to review NECA's USF expense adjustment formula, and the release of the *July 2002 Order,* NECA made at least thirteen written or oral *ex parte* presentations to Bureau staff. Some presentations were quite lengthy (over 50 pages), containing extensive data relating to the threshold bias problem. These presentations were thoroughly reviewed by Commission staff, who frequently requested supplemental data, format changes and additional explanatory materials following initial submissions. *See e.g.,* Letter from Regina McNeil, NECA, to Magalie Roman Salas, FCC (Jan. 7, 2002).

To date, the Bureau has not addressed the issue of bias in the CPL formula. In its *July 2002 Order*, however, the Bureau asserted that the "disbursement simulation" standard of section 69.606(a) did not apply to average schedule HCF payments.[9] NECA has sought reconsideration of the *July 2002 Order*[10] in this regard, explaining that the Bureau's abandonment of section 69.606(a)'s disbursement simulation test represented a dramatic departure from long-settled average schedule policy and produced inaccurate results.[11]

NECA again proposed the EAPL approach for 2005 HCF payments in its *September 2004 filing.*[12] Consistent with previous orders, the Bureau instead approved a CPL formula on grounds that it better simulated the cost per loop data of average schedule companies.[13] In response to NECA's assertions that section 69.606(a) requires that the formula simulate payments, not costs per loop or other intermediate data used to compute payments, the Bureau once again held that section 69.606(a) didn't apply.[14]

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9 *July 2002 Order* at ¶¶ 8-11.

10 NECA Petition for Reconsideration of the *July 2002 Order* (August 29, 2002) (*NECA August 2002 PFR*), *recon. pending.*

11 *Id*. at *7*. To date the Bureau has taken no action on NECA's Petition for Reconsideration of the *July 2002 Order*. NECA similarly sought reconsideration in 2003 of the Bureau's *December 2002* and *December 2003 Orders*, which rejected, respectively, NECA's 2003 and 2004 EAPL proposals in favor of CPL formulas. *See* NECA Petition for Reconsideration of the *December 2002 Order* (filed Jan. 27, 2003) (*January 2003 PFR*), and NECA Petition for Reconsideration of the *December 2003 Order* (filed Jan. 23, 2004). These petitions are still pending as well.

12 *September 2004 Filing*.

13 *December 2004 Order* at ¶ 6.

14 *Id*.

II. DISCUSSION

The Bureau should affirm that the "payment simulation" standard of section 69.606(a) applies to all average schedule formulas, including the HCF loop cost formula. The Bureau should also determine, as the data clearly show, that the EAPL formula is an unbiased predictor of HCF payments to average schedule companies, and therefore should be approved for average schedule HCF payments in 2005.

In support of this request, NECA respectfully refers the Bureau to its *August 2002 PFR*, which fully sets out the basis for reconsideration of the Bureau's *July 30 Order*. Inasmuch as the Bureau's *December 2004 Order* is based on the same rationale used in the *July 30 Order,* (*i.e.,* that the Commission's rules require the HCF formula to simulate cost per loop data, regardless of whether resulting payments are correct), the same basis for reconsideration applies.

III. CONCLUSION

NECA has shown that its proposed EAPL formula is a more accurate predictor of average schedule HCF payments than the CPL formula. The Bureau should accordingly reconsider its prior decisions, including, specifically, its *December 2004 Order*, and should issue an order approving NECA's proposed EAPL formula.

Respectfully submitted,

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